IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

MFA.No. 1100 of 2002(B)

OA.90/2001 of RAILWAY CLAIMS TRIBUNAL, ERNAKULAM
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APPELLANT: APPLICANT

MOHAMMED ABU SWABIR,
S/O. M.F.ABOOBAKER KUNJU, RESIDING AT K.O.MANZIL,
P.O.MELANGADI, KONDOTTY 673 648,
MALAPPURAM DISTRICT.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)
SRI.ALEXY AUGUSTINE

RESPONDENTS:

UNION OF INDIA, OWNING SOUTHERN
RAILWAY, REPRESENTED BY GENERAL MANAGER,
SOUTHERN RAILWAY, CHENNAI-3.

BY ADV. SRI.VARGHESE P.THOMAS, SR.SC,RAILWAYS
SRI.K.V.SADANANTH PRABHU

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 11/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.1100 OF 2002 (B)

Dated this the 11th day of September, 2007

J U D G M E N T

KOSHY,J.

The appellant in this case while travelling in Mangalore - Chennai Mail on 22.6.2001, suffered serious injuries when the train fell into the Kadalundi river. His both bones of the left leg was fractured. According to the claimants, there was fracture and he was unable to walk freely. He applied for compensation. Tribunal calculated compensation as per the Schedule fixed under the Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 1997. The contention raised by the appellant is that compensation is payable under the above rule when there is no negligence on the part of the Railway. Here the negligence is on the part of the Railway. It is further contended that even under the Schedule, compensation was not correctly calculated. It is true that as per item 33 of Part III of Schedule to Rule 3, for fracture of major bone like femur, tibia, Rs.40,000/- is the compensation payable. In the Schedule no compensation amount is fixed for

the fracture of fibula. Under Rule 3 Sub-rule (3), amount of compensation payable in respect of any injury other than an injury specified in the Schedule or referred to in sub-rule (2) resulting in pain and suffering, shall be such as the Claims Tribunal may after taking into consideration medical evidence, besides other circumstances of the case, determine to be reasonable. Sub-rule 2 makes the limit of compensation for various injuries not exceed Rs.4,00,000/-. This is not disputed that he had fracture of tibia and shortening of leg. He was in the hospital for a long period and he was under treatment for about three months. Taking all these aspects, we are of the opinion that at least Rs.20,000/- ought have been granted for fracture of fibula and other injuries not specifically mentioned in Schedule II. The above Rs.20,000/- shall be deposited by the respondent Railway with 6% interest from the date of application till deposit. With the above directions this appeal is partly allowed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.1100 OF 2002 ()

J U D G M E N T

11th September, 2007